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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,935	11/01/2001	Robert Eric Montgomery	P1088US11	9955
53/096	7590	01/26/2010		
DISCUS DENTAL, LLC 8550 HIGUERA STREET CULVER CITY, CA 90232			EXAMINER	
			ROBERTS, LEZAH	
			ART UNIT	PAPER NUMBER
			1612	
			MAIL DATE	DELIVERY MODE
			01/26/2010 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/039,935	Applicant(s) MONTGOMERY, ROBERT ERIC
Examiner LEZAH W. ROBERTS	Art Unit 1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 56-58, 61-65, 67-76 and 78-81

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Lezah W Roberts/
Examiner, Art Unit 1612

Continuation of 3. NOTE: Applicant has proposed to amend claims 56, 71 and 78 recite the limitation "abrasive free". This limitation was not previously considered in regard to the compositions of claims 56, 57, 61-65, 70-76 and 78-81, and further analysis would be required to determine whether "abrasive free" would have been obvious. Additionally a further search would also have to be made to determine the state of the art with regard to this issue.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments that the newly amended claims are patentable over the prior art references are moot at this time due to non-entry of the proposed amendment.

Response for Arguments pertaining to previously submitted claims:

In regard to Applicant's assertion that Williams teaches away from the instant invention, although Williams teaches lower concentrations, it also teaches 10%, which is encompassed by the claims. Further most of the instant claims do not disclose a concentration of hydrogen peroxide and the claim that does recite such a value recites "10% of a hydrogen peroxide precursor". A precursor releases less than 10% hydrogen peroxide, and thus the amount would be encompassed by Williams. Further it has been disclosed in the art that concentrations of less than 10% hydrogen peroxide are effective for whitening teeth (Hassan et al., US 5,851,514, disclose hydrogen peroxide concentrations ranging from 0.5 to about 10% are sufficient for effecting teeth whitening). The Examiner agrees that peroxide is not the only result effective variable in the composition, but it is also asserted that if all components were held constant and the hydrogen peroxide amount was varied that the whitening effect would be different. Therefore it is maintained that more hydrogen peroxide would lead to better results in whitening effect and thus it would be obvious to one of ordinary skill in the art to increase the amount of hydrogen peroxide to concentrations of more than 10%. In regard to the foaming, the instant claims recite alkali metal carbonates, which would also encompass the sodium bicarbonate of Williams. Further the compositions of Williams are made neutral similar to the compositions of the instant claims.

In regard to Williams in view of Collin in further view of Burke, Burke supplies the deficiencies of Williams in view of Collin by teaching pH adjusting agents that are suitable for use in the compositions of the combined teachings of Williams and Collin.

In regard to Wagner in view of Collin, see Examiner's Response above in regard to the concentration of hydrogen peroxide.

In regard to the obvious double patenting rejection, Applicant requests the rejection be held in abeyance until allowable subject matter has been indicated. This rejection is maintained since applicant has (effectively) not responded to the rejection in a substantive manner. See 37 CFR § 1.111(b) and MPEP § 714.02.